

SECOND REGULAR SESSION

SENATE BILL NO. 1170

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHIELDS.

Read 1st time January 27, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

2587S.03I

AN ACT

To amend chapter 217, RSMo, by adding thereto one new section relating to the rehabilitation of certain offenders.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 217, RSMo, is amended by adding thereto one new section, to be known as section 217.363, to read as follows:

217.363. 1. As used in this section, the following terms mean:

- (1) "Board", the board of probation and parole;**
- (2) "Mental health treatment program", a department of mental health certified community treatment program that provides structured and supervised programs for individuals diagnosed with a serious and persistent mental illness and includes one or more of the following: community psychiatric rehabilitation, mental health outpatient services, and community support. The term "mental health treatment program" shall not include treatment programs offered in a prison or jail facility;**
- (3) "Nonviolent offender", any offender who is convicted of a crime other than murder in the first or second degree, involuntary manslaughter, kidnapping, forcible rape, forcible sodomy, robbery in the first degree, or assault in the first degree;**
- (4) "Parole", the release of an offender to the community by the court or the state board of probation and parole to the expiration of his or her term, subject to conditions imposed by the court or the board and to its supervision;**
- (5) "Persistent offender", any person who has pleaded guilty to or has been found guilty of two or more felony offenses of the laws of this state or of the United States, or any other state, territory, or district;**
- (6) "Probation", a procedure under which a defendant found guilty of a crime upon verdict or plea is released by the court without imprisonment, subject**

to conditions imposed by the court and subject to the supervision of the board;

(7) "Substance abuse treatment program", a department of mental health certified community substance abuse treatment program that includes one or more of the following: outpatient treatment, narcotic replacement therapy, drug education or prevention course, and/or inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The term "substance abuse treatment program" shall not include treatment programs offered in a prison or jail facility;

(8) "Successful completion of treatment", that an offender who has had substance abuse treatment and/or mental health treatment imposed as a condition of probation or parole has completed the prescribed course of treatment in an approved manner.

2. Notwithstanding any other provision of law, any person who has pleaded guilty to or been found guilty of violating the provisions of chapter 195, RSMo, relating to the simple possession or control of a controlled substance, or for a drug or alcohol use offense shall be considered by the court for probation. If probation is granted, in addition to other requirements that may be imposed by the court, the court shall require participation in, and completion of, an appropriate community-based substance treatment program. In such cases, the court may not impose incarceration as an additional condition of probation.

3. Notwithstanding any other provisions of law, any person convicted of a nonviolent offense and who is diagnosed with a serious mental illness and whose mental illness appears to have been a precipitating or contributing factor in the crime shall be considered for probation. If probation is granted, in addition to other requirements that may be imposed by the court, the court shall require participation in an appropriate community based treatment program. In such cases, the court may not impose incarceration as an additional condition of probation.

4. The provisions of subsections 2 and 3 of this section shall not apply to:

(1) Any person who has pleaded guilty to, or been convicted of a dangerous felony as defined in section 556.061, RSMo;

(2) Any person determined to be a persistent offender;

(3) Any defendant who has been previously sentenced to probation under the provisions of this section and has been unsuccessful in two separate courses of substance abuse treatment and is found by the court by clear and convincing evidence, to be unamenable to any and all forms of available community based substance abuse treatment;

(4) Any defendant who refuses substance abuse and/or mental health

treatment as a condition of probation.

5. (1) Within seven days of an order imposing probation under the provisions of this section, the board shall notify the substance abuse or mental health program designated to provide treatment;

(2) The treatment provider shall arrange an assessment within fourteen days of this notice;

(3) A treatment plan shall be provided to the board within thirty days of the individual's admission to treatment;

(4) On a monthly basis, the treatment provider shall prepare and forward a monthly progress report to the board's designee;

(5) If at any point during the course of treatment the treatment provider notifies the board that the defendant is unamenable to the treatment being provided, but may be amenable to other treatments or related programs, the board may modify the terms of probation to ensure that the defendant receives the alternative treatment or program;

(6) If at any point during the course of treatment the treatment provider notifies the board that the defendant is unamenable to the treatment provided and all other forms of treatment, the board may move to the court to revoke probation;

(7) Substance abuse treatment services provided under the provisions of this section, as a required condition of probation may not exceed twelve months, provided, however, that additional aftercare services as a condition of probation may be required for up to six months.

6. Where a defendant receives probation under the provisions of this section and violates such probation either by being arrested or by violating a condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may intensify the requirements for community treatment if appropriate, or otherwise modify or revoke probation if the alleged violation is proved.

7. Notwithstanding any other provisions of law, any inmate who is within one year of projected release by parole, has served a minimum of one hundred twenty days of his or her sentence, and is serving a sentence pursuant to chapter 195, RSMo, relating to the simple possession or control of a controlled substance, or for a drug or alcohol use offense; or serving a term for a nonviolent offense and who is diagnosed with a serious mental illness and whose mental illness appears to have been a precipitating or contributing factor in the crime, shall be considered by the board for an advanced, early release from prison under parole to participate in an appropriate community based treatment program and transitional care.

8. Ineligible inmates under the provisions of this section shall be:

(1) Inmates serving terms or having past convictions for a dangerous felony as defined in section 556.061, RSMo;

(2) Any inmate who has, while under parole supervision been previously unsuccessful in community treatment and who is subsequently regarded by the board as unamenable to any and all forms of available community based treatment;

(3) Any inmate who refuses to participate in appropriate substance abuse and/or mental health treatment as a condition of early release from prison.

9. Inmates approved for early parole release to treatment shall be required to participate in and complete the appropriate community treatment program as a condition of parole.

10. The release of the offender shall be coordinated with the community treatment provider so that the offender is admitted into the program within the first seven days of release from prison.

11. A treatment plan shall be provided to the board within thirty days of the individual's admission to treatment.

12. On a monthly basis, the treatment provider shall prepare and forward a monthly progress report to the board's designee.

13. If at any point during the course of treatment the treatment provider notifies the board that the parolee is unamenable to the treatment being provided, but may be amenable to other treatments or related programs, the board may modify the terms of parole to ensure that the individual receives the alternative treatment or program.

14. If at any point during the course of treatment the treatment provider notifies the board that the parolee is unamenable to the treatment provided and all other forms of treatment, the board may act to revoke parole.

15. Substance abuse treatment services provided under the provisions of this section, as a required condition of parole may not exceed twelve months, provided, however, that additional aftercare services as a condition of parole may be required for up to six months.

16. Each offender under the supervision of the board shall be required to pay a rehabilitation fee of twenty-five dollars each month the offender is under supervision, or three hundred dollars annually. The requirement of rehabilitation fees shall become effective on August 28, 2004, and shall not be applied retroactively to offenders for any past period of supervision.

17. The payment of rehabilitation fees shall be a written condition of each offender's probation or parole and no offender shall be released from supervision until such fees have been collected.

18. Fees may be waived on a temporary or permanent basis for an offender only when the board has determined that the offender would suffer a serious financial hardship due to:

- (1) Temporary or permanent employment disability;
- (2) Temporary unemployment for bonafide and authorized reasons;
- (3) Approved full-time enrollment in school or vocational training;
- (4) Detention in a jail or other correctional facility for thirty days or longer;
- (5) Indigence due to hospitalization, nursing home residence, hospice residence, or placement in other liberty restricting environments in which no income earning ability exists.

19. The required fees shall be collected and remitted to the rehabilitation fund created pursuant to this section within sixty days of receipt. The department of mental health is authorized to enter into agreements with other governmental entities for the collection of the required fees, or into contracts with non-governmental entities, for the collection of the required fees. An annual report shall be prepared that identifies the funds collected and the funds remitted to the rehabilitation fund.

20. There is hereby created in the state treasury a fund to be known as the "Rehabilitation Fund" that shall be administered by the department of mental health. The state treasurer shall credit to the fund any interest earned from investing the moneys in the fund. Notwithstanding the provisions of section 33.080, RSMo, money in the rehabilitation fund shall not be transferred and placed to the credit of general revenue at the end of the biennium.

21. Fees received pursuant to the provisions of this section shall be deposited in the rehabilitation fund. The moneys received from such fees shall be appropriated solely for the purpose of funding the rehabilitation services required by this section. However, nothing in this section shall be interpreted or construed to allow any entity to use funds to supplant funds from any existing fund source or mechanism currently used to provide the required treatment.

22. The department of corrections and the department of mental health shall promulgate rules and regulations to implement and administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional,

then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

23. The department of mental health shall provide an annual report that describes the effectiveness and financial impact of the requirements of this section. The study shall include, but not be limited to: a description of the number served and outcomes, a study of the implementation process, a review of lower incarceration costs, reductions in crime, reductions in substance abuse, reduced welfare costs, and the adequacy of the funding mechanism to implement the provisions of this section.

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